SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 575.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

EDWARD BATHGATE, MATTHEW PEACOCK, JOHN TOKER, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN error,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney, defendants in error. | No. ——

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

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2 No. 1136.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: the Honorable Howard C. Hollister, judge. Among the proceedings had were the following, to-wit:

THE UNITED STATES OF AMERICA,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, John Toker, Jacob Diesenhofer, Harry Otting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney. | Indictment. No. 1136.

Be it remembered, that, to-wit: on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and pre-

sented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. Of the October Term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count One—Section 19, Penal Code.—The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for the division and district, upon their oaths and affirmations, charge and present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, together with other persons whose names are to the grand jurors unknown, through the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio and within the Western Division of the Southern District of said State of Ohio and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together and with other persons whose names are to the grand jurors unknown to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T.
4 Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donavan, Lewis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William D. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavey, John Krause, William F. Thompson, and George Hodges, and each of them in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at the general election which was to be and in fact was held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be and in fact were voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be and in fact was voted for, chosen, and elected, and at which time a Representative in the Congress of the

United States of America in said first congressional district of Ohio was to be and in fact was voted for, chosen, and elected.

Second, of being qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards of said election make a true, correct, and accurate count of the legal and only the legal votes cast any qualified voters for presidential electors.

5 First, by then and there bribing a large number of otherwise qualified voters at said elections and promising them in advance of their voting sums of money to vote against said presidential electors and each of them and to vote in favor of opponents of said presidential electors and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, George Hodges and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election and caused the election

6 boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ofiias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election and their names appeared on the ballots to be voted thereat; that neither was a Senator or Representative, or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither has ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each were at said time, and have been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the names of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, confederation and agreement, the said Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, William Haney, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters, cast, accepted, received and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct and accurate count and return of the legal, and only the legal votes cast by the qualified voters for United States Senator.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene, and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed as aforesaid to purposely and intentionally
8 place and caused to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional districts to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That *that* said Atlee Pomerene was a candidate for United States Senator, from the State of Ohio at the said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years past has been a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and therefore duly registered and entitled to vote therein accordingly to the requirements of law; that he had never engaged in insurrection
9 or rebellion against the United States, or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, that the said and said other persons, whose

names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed, and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election, make a true, correct, and accurate count and return of the legal, and only the legal votes cast by qualified voters for Representatives in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them, in advance of their voting, sums of money to vote against the said Edward H. Brink, and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally, place, and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown; and also,

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and

return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day,
11 the said Edward H. Brink was more than twenty-five years of age, and was, and for more than seven years immediately prior thereto had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present, that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation and agreement, the said Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, William Haney, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress and threaten and intimidate certain citizens of the United States, to-wit, each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said first congressional district, and each and all of the qualified electors at said election in each of the voting precincts of the State of Ohio, and that said qualified electors cannot now, and could not ever, all to be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified are too numerous to list by name in this indictment, without unreasonably lengthening the same, and are
12 so numerous as that it would require an unreasonable prolongation of the investigations by this grand jury to so identify them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to-wit:

First. The right to have the votes and ballots for presidential electors, United States Senators and Representatives in said congressional district cast in their respective precincts at said election confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators and Representatives in Congress at said election counted to its full strength uneffected and unimpaired by the casting of votes in the said precincts by men who had been bribed and accepted money therefor, and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators and Representatives in Congress from said district, by then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote and cast their ballots in said pre-
13 cincts at said election for presidential electors, United States Senator and Representative in Congress, from said congressional district and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at *at* said election, by including said illegal votes in such count and return, which men so bribed and purchased included Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney and other persons whose names are to the grand jurors unknown.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit: Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons, whose names are to the grand jurors unknown, and promised and agreed, in advance of their voting to pay them money therefor, and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator and Representative in Congress from said district and caused the election boards in said precincts to accept and receive illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further

14 present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof, and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at the said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank E. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States for the said congressional district.

That each and all of the said candidates for presidential electors and for the office of the United States Senator and for the office for Representative in the Congress of the United States has been therefore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the general election and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

15 And the grand jurous aforesaid, upon their oaths and affirmations aforesaid, do further present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within the said county of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and

enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates and to all legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned
16 by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants, in order fraudulently to favor certain other candidates for the said office at said election, to wit:

U. G. Danman, Edwin Jones, Max Burghiem, Geo. McG. Morris, Lyburn T. Palmer, David Oldham, Samuel a Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whotney, Edward W. Horn, Harry L. Vail, and W. W. Hall as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator, and Nicholas Longworth, as candidate for Representative in the Congress of the United States and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the true preferences and choice of said legally qualified voters of said congressional district, unlawfully were to present, by force, intimidation and fraud, to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could prevent by those means; and were to procure, by bribery, payment, and promise
17 in advance of, or at the said election of, payment of money to them for so doing, others of said legally qualified voters, desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates, instead of said candidates first above named, and thereby procuring the acceptance, receipt, counting and returning in due course of said election boards of said

congressional district, of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney throughout the period of time, at the place, and in manner and form aforesaid, unlawfully, and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County,
18 within the State of Ohio and within the Western Division of the Southern District of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purposes as follows:

First, by perverting and obstructing and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution providing for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress, of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States entitled "An act providing a temporary method of conducting the nomination and election of the United States Senators," approved June 4th, 1914.

Second. By denying to and preventing the enjoyment of the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America, determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count and return the legal and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of, and attested by the secretary of the State, of said State, certifying that at the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio, and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the Clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-Fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a member of the said House of Representatives including the statutory pay of seventy-five hundred dollars per annum, provided by law as the

compensation for the yearly service of any duly elected member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors and for candidates for United Senators and for a candidate for Representative in Congress at said election, in the various election precincts of the first congressional district, Hamilton County, in the State of Ohio, a large number of persons to be thereafter chosen by the said defendants, or did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America and by the laws of the State of Ohio governing the qualifications electors at said election, with full knowledge upon the part of said defendants, and each of them, that the said persons, so the be voted, and caused to be voted, as aforesaid, did not or would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men, they the said defendants, could bribe and buy, which said men so to be bought, bribed and
21 purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senators and said Representative in Congress, and by causing such men when so bought, bribed, and purchased to vote in said county for presidential electors, United States Senator and said *and said* Representative in Congress, and by causing such men when so bought, bribed and purchased to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said John Toker procured the said defendant, Alfred Purcell, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Alfred Purcell how to mark his ballot to vote said Republican ticket; and that the said defendant, John Toker, then and there and at the same time instructed and promised the said defendant, Alfred Purcell, that after he had voted in accordance

with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of
22 said conspiracy said defendant, Alfred Purcell, marked his ballot so to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Alfred Purcell met the said defendant, John Toker, in close proximity to the voting place in said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof, the said John Toker paid the said defendant, Alfred Purcell, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Matthew Peacock procured the said defendant, William Haney, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said William Haney how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, William Haney, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, William Haney, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted
23 in accordance with said instructions and agreement the said William Haney met the said defendant, Matthew Peacock, in close proximity to the voting place in said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, William Haney, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Matthew Peacock procured the said defendant, Charles Lewis Finch, a registered voter in pre-

cinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Charles Lewis Finch how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, Charles Lewis Finch, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Charles Lewis Finch, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions, the said Charles Lewis Finch met the said defendant, Matthew Peacock, in close proximity to the voting place in
24 said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, Charles Lewis Finch, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Matthew Peacock procured the said defendant, Jacob Diesenhofer, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Jacob Diesenhofer how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, Jacob Diesenhofer, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Jacob Diesenhofer, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Jacob Diesenhofer, met the said defendant, Matthew Peacock, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement
25 and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, Jacob Diesenhofer, the sum of one dollar.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment. Violations of sections 19 and 37, Penal Code. A true bill. J. L. Clark, foreman.

26 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, Edward Bathgate, Matthew Peacock, and John Toker, by their attorneys and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, and JOHN TOKER, defendants.
No. 1136.

Demurrer of Edward Bathgate, Matthew Peacock, and John Toker to the indictment.

Now come the defendants, Edward Bathgate, Matthew Peacock, and John Toker, and demur to the indictment herein and to each and every count thereof for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said count that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the
27 qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all

of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth. Because in other particulars said counts and each of them fail to describe any offense against the laws of the United States.

Third count.

28 Defendants demur to the third count of said indictment for the reason that the same does not state sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results to be attained by said conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

29 And afterwards, to wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-332.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE ET AL., DEFENDANTS.	Entry. No. 1136.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

30 Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants.	Petition for writ of error. No. 1136.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the

defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

Assignment of errors.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

United States District Court, Southern District of Ohio, Western Division. No. 1136. Assignment of errors.

31 THE UNITED STATES OF AMERICA, plaintiff,
v.
EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants. } No. 1136. Assignments of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment
32 in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12–354.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney, defendants.	Entry. No. 1136.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assignments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of
33 error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

34 And afterwards, to wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE, MATTHEW PEACOCK, JOHN TOKER, JACOB DIESENHOFER, HARRY OETTING, JOSEPH A. HUGHES, RICHARD KAUFMAN, ALFRED PURCELL, JOSEPH CHAMBERS, CHARLES LEWIS FINCH AND WILLIAM HANEY, DEFENDANTS.	No. 1136.

Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error, and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
EDWARD A. BATHGATE,
JOHN TOKER, and
MATTHEW PEACOCK,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER.

35 District Court of the United States, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE ET AL., DEFENDANTS.	No. 1136.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER ET AL., DEFENDANTS.	No. 1137.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY COONS ET AL., DEFENDANTS.	No. 1138.
THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM FARRELL ET AL., DEFENDANTS.	No. 1139.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* OSCAR KLAYER ET AL., DEFENDANTS.	No. 1140.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* ROBERT URICHO ET AL., DEFENDANTS.	No. 1141.

36 Opinion on rehearing of the demurrers and motions to quash.

Immediately after the close of the argument at the first hearing of the demurrers the court overruled them, impelled to that action by a decision in a neighboring district by a judge of wide experience, including cases involving election frauds, and by what then seemed and still is urged by counsel for the United States to be and inevitable deduction from the decision of the Supreme Court of the United States in what is known as the Mosley Case, 238 U. S. 383.

The ultimate conclusion in that case was that since a citizen of a State has the right under the Constitution and laws of the United States to vote it necessarily follows that he has the right to have his vote counted, and it was therefore an offense against that right under section 19 of the Criminal Code for two of the three members of a State election board to make their returns omitting the returns of the precinct in which he had voted at an election for a Member of Congress. Section 19 reads:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall moreover be thereafter ineligible to any office or place of

honor, profit, or trust created by the Constitution or laws of the United States."

The argument was, and is, that a citizen has rights secured by the Constitution and laws of the United States, although not expressly defined, but which by necessary implication are as effectually declared as if specifically described. The defendants do not and can not deny that the principle is firmly established by decisions of the Supreme Court, and the most important question now involved is
37 whether or not, notwithstanding the logical inference to be drawn from the Mosley case, there is a clearly ascertainable intention on the part of Congress applicable to section 19, with respect to the conduct of elections for presidential electors, for Senators, and for Members of the House of Representatives, to suspend Congress' own power over the subject and to commit the conduct of such elections to the States under the election laws established by them.

The defendants' counsel do not deny the power of Congress to enact a system of laws under which such elections must then be held, including the definition of offenses against them, and providing for punishment. On the contrary, their argument is based on the existence of the power, but the denial of its exercise through the enactment of section 19. Their showing at the bar and in a brief of great learning and research of the inapplicability of section 19 to counts 1 and 2 of the indictments, was directed also to the third count of the indictments based on section 37 of the Criminal Code, which reads:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

Shortly after the opinion was announced at the close of the first hearing, the Supreme Court in a series of cases (Nos. 683, 684, 775 and 776), which have been called in argument the "Gradwell Case," decided April 9, 1917, that a conspiracy to commit bribery at elections in which a candidate for Representative in Congress was voted for, was not, under section 37, a conspiracy to commit any offense against, or to defraud, the United States or a candidate for Congress in any manner or for any purpose. A rehearing of these motions and demurrers was then had and they are now reconsidered.

The opinion in that case was by Mr. Justice Clarke, who
38 noted the significance of the inclusion of section 37 under the title in the statutes, "Crimes against operations of the Government," as distinguished from offenses included under the title, "Crimes against the elective franchise and civil rights of citizens," and referred to the decisions holding that there are no common law offenses against the United States and that no man can be punished as a criminal under the laws of the United States unless his case is "plainly and unmistakably" within the provision of some statute.

These considerations were given weight in that opinion in reaching the conclusion that it was not the intention of Congress by section 37 to make it a crime against the United States or against a candidate for Congress for persons to conspire to corrupt by bribery a State election at which candidates for Congress were voted for. The question was not "that the people of the United States and so their Government, considered as a political entity," have no interest in and a right to honest and fair elections; but, admitting the right, whether section 37 "was enacted to protect that right and whether a conspiracy to bribe voters was a violation of it." The decision was that the section was not enacted for any such purpose, and the decision included also the right of a candidate for Congress. The chief reason for the conclusion was, however, that the policy of Congress for its entire constitutional life, with the exception of a comparatively few years during the reconstruction period in the South, had been and now is, "to leave the conduct of the election of its members to State laws, administered by State officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870." Those statutes, repealed in 1894, included bribery at the elections of Representatives in Congress. The learned justice quoted from the reply of Madison to Monroe in the debates at the Virginia convention:

39 "It was found impossible to fix the time, place and manner of election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State governments as being best acquainted with the situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity and prevent its own dissolution. * * * Were they exclusively under the control of the State governments, the General Government might easily be dissolved. But if they be regulated properly by the State legislatures the Congressional control will probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution."

And from the views to the same effect of Hamilton in Essay No. LIX of the Federalist. Mr. Justice Clarke said, in the conclusion to that part of the opinion dealing with section 37—

"that to bribe voters to vote at such an election is not such a fraud upon the United States or upon candidates or the laws of Rhode Island as falls within either the terms or purposes of the section."

The indictments under consideration here are founded, as to their first and second counts, upon section 19, but as to their third count upon section 37, and charge in the first two counts—which, for the purposes of this case, may be considered together—a conspiracy to injure the individuals named to be candidates respectively for presidential electors, Senator of the United States and Representative in the Congress, as well as the voters in the first judicial dis-

trict of Ohio, in the free exercise of their right to have an election held under the laws of Ohio free from bribery.

Inasmuch as the Supreme Court have held that a conspiracy under section 37 to commit bribery at a State election for Representatives to Congress is not a conspiracy to commit any offense against or to defraud, the people of the United States and so their Government considered as a political entity, or candidates for Congress, the demurrers to the third count of the indictments under consideration must necessarily be sustained.

So much counsel for the Government concedes, but insists
40 that section 19, dealing as it does with the civil rights of the individual citizen and candidates as distinguished from offenses against the people and so their Government, as a political entity, makes a conspiracy to injure those individual rights by means of bribery at elections a crime, although a conspiracy under section 37 to commit an offense against or defraud the United States or its people, or candidates for Congress, by means of bribery at elections is not a crime. The argument is that the crime described by section 19 is not a conspiracy to injure, etc., by any specified means, whether criminal under any law of the United States or of a State, or not; but is a conspiracy to injure the citizen in the free exercise or enjoyment of a right or privilege secured to him by the Constitution and laws of the United States, by whatsoever means the conspiracy contemplated to bring that end about.

Hence it is, counsel say, that although Congress repealed in 1894 the act of 1870, making bribery at congressional elections a crime, nevertheless since such conduct as that of the conspiring election officers in the Mosley case to throw out the entire vote of eleven precincts was included in the repeal of the act of 1870 making such conduct unlawful, that the repeal of the law making bribery at Congressional elections unlawful, cannot be regarded as a test or indication of Congressional intention as expressed in section 19, and they cite the Mosley case as conclusive of the matter.

The defendants' counsel say that this, by judicial construction, makes conduct criminal under the laws of the United States which, as declared in the Gradwell case, the policy of Congress in almost the whole of its constitutional life has been, and is, to commit to the States until such times as Congress, in the exercise of its undoubted power, should enact laws under which condidates for Congress, Senators and presidential electors shall be elected.

Defendants' counsel say, and truly, that we are not concerned
41 in this discussion with any moral question or right, and however abhorrent the conduct described in the indictments may be, if the charges are true; yet it is not a crime against the United States unless made so by section 19 beyond a reasonable doubt. Erbaugh v. United States, 173 Fed., 433, 435; Field v. United States, 137 Fed., 6, 8. And it is undoubtedly true that judicial construction ex post facto is as objectionable as ex post facto statute law. Harri-

son v. United States, 200 Fed., 662, 667 (C. C. A. 6); Erbaugh v. United States, 173 Fed., 433, 435 (C. C. A. 8).

It cannot be denied that offenses not directly made unlawful by any express law of the United States have nevertheless been held to be within the meaning of section 19 when the conduct complained of was a conspiracy to injure an expressly conferred right. Such was the case of United States v. Waddell, 112 U. S. 76. There one Lindsey, a citizen of the United States, made, under the homestead laws, an entry on a quarter section of land, and while residing on and cultivating the land for the purpose of perfecting his right to the same under the laws, the defendants drove him off by violence. The acts of violence were of course assaults, which, as such, were not offenses under any law of the United States; but the right of the homesteader to perfect his title was dependent upon the laws of the United States under which he was seeking to obtain the homestead granted to him on certain conditions, among which were living upon and cultivating the land for a period of five years. In that case the right was dependent upon a right expressly conferred. But the right itself may be implied and the act in contravention of its free exercise may also be implied from that right.

That situation is presented by United States v. Mosley, the case upon which counsel for the Government place their chief reliance. It was there said by Mr. Justice Holmes (238 U. S., 386):

42 "It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress. Ex parte Yarbrough, 110 U. S., 651. Logan v. United States, 144 U. S., 263, 293. We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box."

Then the learned justice refers to the "only matter that needs argument." The subject matter of that was, as shown in the opinion of the majority and the dissenting opinion of Mr. Justice Lamar, the congressional intention in repealing in 1894 the sections of the act of 1870 having to do with the regulation of elections of candidates for Congress, and especially in this connection the punishment of officers of election for making fraudulent returns. The argument in the opinion was that Congress, by leaving section 6 of the act (section 19) unrepealed and repealing the sections dealing with specific crimes in elections, intended to protect the citizen in the exercise of the suffrage against conspiracies to injure him in the free enjoyment of that right. It was said by Mr. Justice Holmes, after commenting on the source of the section and the doings of the Ku Klux and the violence attending their domination (387, 388):

"But this section dealt with Federal rights and with all Federal rights, and protected them in the lump, whereas section 4, Rev. Stat., section 5506, dealt only with elections. * * *

"But section 6 being devoted, as we have said, to the protection of all Federal rights, from conspiracies against them, naturally did

not confine itself to conspiracies contemplating violence, although under the influence of the conditions then existing it put that class in the front."

He then notes that the transposition of clauses in section 19, as it now reads and in section 6 as it was first enacted, is to be considered as a reflection of the congressional purpose to emphasize the right to protection from acts other than those involving personal violence, and that such overlapping as might seem to exist upon a consideration of section 4 and section 6, and the imposition of a less onerous penalty in the one than in the other, might have escaped attention when the original act was passed, "or if noticed have been approved, when we consider what must have been the respective emphasis in the mind of Congress when the two sections were passed."

43

The other line of argument was that ten sections of the act of 1870 under the title, "Crimes against the elective franchise and civil rights of citizens," arepealed in 1894, related to crimes by the voter and against the voter and every officer of an election, and that (389) "taken together it is perfectly evident that in them Congress intended to legislate comprehensively and exhaustively on the subject of 'crimes against the franchise'"; that under one or another of the repealed sections the conspiring majority of the county election board would have been subject to indictment for throwing out or not counting the votes of the eleven precincts had those sections not been repealed; that there was no overlapping, because the ten repealed sections might be properly described as crimes against the elective franchise, whereas section 6 more properly covered crimes against civil rights, and that, although the two subjects are dealt with in the same act, they were treated as distinct. Mr. Justice Lamar said further (390):

"Congress, having dealt so explicitly with offenses by State election officers in the ten repealed sections can not be supposed to have referred to them indirectly in section 5508, which does not mention voters or elections or election officers, but deals with the deprivation of civil rights of a different nature."

He then proceeds (390, 391) to show from the debates during the discussion of the repealing act of 1894 the view of Congress—

"that as elections were held under State laws, by State officers who were subject to punishment by the State for a violation of the election laws, they should not be subject to indictment in the United States courts. The express and avowed intent was to repeal all statutes which gave Federal courts jurisdiction over elections and over offenses committed by election officers. And to hold that while a single election officer is now immune from prosecution, two or more can be indicted under section 5508, gives an enlarged operation to the theory that an act, not in itself criminal, may be punished if committed by more than one. Such construction also injects section 5508 into a field from which it was excluded when passed in 1870 and into which it can not now be forced by implication. For under Penal Code

44 (section 399), section 5508 means now exactly what it did when it was originally enacted."

If in the discussion here emphasis seems to be given to a dissenting opinion it is because at the first argument on these demurrers much was made by counsel for the defendants of the apparent intention of Congress by the repeals of 1894, adopting, as far as it went, the view of Mr. Justice Lamar, and for the reason also that an appreciation of the opposing lines of argument may be helpful in determining whether or not this case can be distinguished in principle from the Mosley case, and if not, whether or not the reasoning in the opinion in the subsequent Gradwell case warrants the conclusion that as bribery at Federal elections was not considered in the Mosley case the principle there decided does not cover this case, into whatsoever uncertain fields the logic of the decision might seem to lead.

It can not escape notice, however, that neither in the opinion written for the majority nor in the dissenting opinion in that case was any reference whatever made to what is the real basis for the unanimous opinion in the Gradwell case, the unmistakable policy of Congress to leave the conduct of elections of Members of Congress to the regulation of the States. The court instanced the enforcement act of 1870 as the only departure from that policy in the now many years of the Government's existence and that for a purpose well understood at the time of its enactment as well as at the time of its repeal.

Nor, as bearing on the intention of Congress in the enactment of section 19, can the significance of the fact be overlooked that until the Gradwell case no prosecution has ever been instituted in the courts of the United States, so far as this court is aware, to punish bribery at State elections for Members of Congress in the entire history of the United States.

45 Moreover, an analysis of the Mosley case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote.

In the indictments under consideration, the right of the candidates to be candidates was not injured, and, so far as appears, the votes cast for them were counted; the right of voters to vote was not interferred with, and, so far as appears, their votes were counted. The gravamen of the charge involves an injury through the change in the result of the election brought about by bribery of voters. That result affected not only these candidates and all the voters in the first congressional district and all the voters in Ohio; but also the candidates for President and Vice President, and all the voters in the United States. The injury growing out of the result of the election was not dealt with in the Mosley case, and it may not be going too far to say that the exact point decided in

that case is not applicable to these indictments at all, and that these indictments are to be ruled by the Gradwell case, and not by the Mosley case.

The logic of the opinion in the latter case is impressive, and, if applicable to these indictments, is irrevocable so far as this court is concerned; but it cannot be said that the majority of the court and the learned justice who wrote the opinion intended to go any further than to decide the exact case before the court. This receives emphasis from the unanimous opinion of the court in the later case.

There the court, having held section 37 to be inapplicable to a conspiracy to commit an offense against, or to defraud the United
46 States, or a candidate, by bribery at a State election for a Member of Congress, proceeded to consider whether or not section 19 included a conspiracy to injure candidates for the nomination at a primary election held under State laws by procuring persons, not legal voters, to vote, and a number of them to vote more than once in favor of one of the candidates other than those alleged to be injured and oppressed. It was held that the section was inapplicable to primary elections and particularly to such elections held under the peculiar laws of West Virginia. One reason was that such primary elections were not in existence when section 19 was enacted; that the right of candidates for nomination for Senator to an uncorrupted primary election at which the final candidate is selected, cannot reasonably be said to be derived from the Constitution and laws of the United States, for they are derived wholly from the State law and nothing of the kind can be found in any Federal statute; and that—

"Even when Congress assumed, as we have seen, to provide an elaborate system of supervision over congressional elections no action was taken looking to the regulation of nominating caucuses or conventions, which were the nominating agencies in use at the time such laws were enacted;"

and that it was not for the courts, in the absence of congressional legislation regulating primary elections for the selection of a candidate for Senator—

"to attempt to supply it by stretching old statutes to new uses, to which they are not adapted and for which they were not intended. In his case, as in the others," (that is, the cases involving section 37) "we conclude that the section of the Criminal Code relied upon, originally enacted for the protection of the civil rights of the then lately enfranchised negro, cannot be extended so as to make it an agency for enforcing a State primary law, such as this one of West Virginia."

It may be assumed for the purposes of this case that candidates for presidential elector, Senator, and Congress, respectively, have a constitutional right to be candidates, which right and the free exercise of it come within the protection of section 19.

47 If, however, a candidate for these respective positions has such a right as that, under section 19, the Government of the United States may prosecute a conspiracy to injure it, or its free exercise, it would not be illogical to say that State primary election laws upon which depend the acquirement of the right, Congress having unquestionable power to enact laws for the conduct and control of primary elections held to elect such candidates, would be also within the meaning and compass of section 19. In the Gradwell case, however, the Supreme Court do not adopt logic as a test, but declare, as of course they must, that the test is the intention of Congress: that Congress did not intend, by the enactment of section 19 in 1870, to include infractions of State laws through the operation of which a citizen became a candidate for United States Senator.

Of the classes named in counts one and two whose rights are said to be affected by the alleged illegal acts complained of, are also all the voters in the first congressional district. It is said that logically the rights of these voters, as well as the rights of candidates include not only the free exercise of voting and the counting of their votes, but also an election free from the corruption of bribery, for otherwise their votes would not be effective. If logic were the test, the Government's position would be strong, but logic cannot prevail as against clear congressional intention, the latest declaration of which, as relating to elections, is found in the Gradwell case.

It is true that in dealing with section 19 in the opinion and decision of that case the court do not say that a conspiracy to deprive a citizen of a right under the Constitution or laws of the United States by an act made illegal by the election laws of a State, was not within the meaning of that section, for the decision is capable of an interpretation quite the contrary; but they do say that a conspiracy to defraud the United States by bribery at a Congres-
48 sional election does not involve any law of the United States, because the regulation and conduct of those elections have been committed to the States, and that an attempt to punish such a conspiracy by indictment by a Federal grand jury is futile, because the United States courts have no jurisdiction in the premises. Considering section 19 and the application sought for it in that case, Mr. Justice Clarke says:

"Here again, confessedly, an attempt is being made to make a new application of an old law to an old type of crime, for section 19 has been in force, in substance, since 1870. * * *

The old type of crime referred to was bribery in a State election for a Member of Congress.

If the right of the people of the United States and so their Government as a political entity, and the right of a candidate, to have an election for a Member of Congress free from a conspiracy to corrupt the election by bribery is not a right, the deprivation of which is made a crime under section 37, it necessarily follows that a conspiracy to injure the right of the voter and of the candidate

by bribery at a State election at which candidates for Federal positions are voted for, is not an offense under section 19, because the same reason would apply in construing section 19 as the Supreme Court have applied in construing section 37, since bribery at such elections is a matter which, by the policy of Congress has been committed to the States. It must be that the right of voters and candidates under section 19 to have an election free from bribery can rise no higher than the right of the people of the United States and candidates under section 37 to have an election free from bribery.

If a fallacy underlies this reasoning it results from the failure to appreciate such a difference between the right of the people and so their Government as a political entity, and the righ of candidates, when the indictment is drawn under section 37, and the right of the individual voter or individual candidate, when the in-
49 dictment is drawn under section 19, as would withdraw the offense in the one case from the jurisdiction of the courts of the United States, but leave the same act cognizable by those courts in the other, although in both the evil means contemplated by the conspiracy are exactly the same. If the difference, with such results, exists, this court is unable to see it. If the difference does exist, then the question whether or not a crime has been committed of which the Federal courts have jurisdiction depends solely upon how the indictment is framed. If it charges a conspiracy to defraud the United States or candidates by means of bribery at elections, under section 37, there is no crime against the United States, and the Federal courts have no jurisdiction. If it charges, under section 19, a conspiracy against the individual voter, or candidate, by means of bribry at elections, it charges an offense against the United States within the jurisdiction of the Federal courts. This cannot be. If it is the policy of Congress not to interfere with bribery at State elections for Members of Congress, the conclusion is inevitable that whatever means a conspiracy under section 19 contemplates, bribery at such State elections is not one of them.

While we may by construction, say first, a citizen has a right to vote, and, by construction from this, say, second, a voter has a right to have his vote counted, and, by construction from this, third, that, therefore, he has a right to an election free from bribery, we are still not far advanced toward the conclusion that section 19 was passed to protect the voter in the right to have an election free from bribery. It will not do, by successive deductions of this kind, to construe a man into the penitentiary however heinous his offense may be. There must be a plain and unmistakable congressional intention to make what he has done an offense against the United States before his act becomes a crime against the United States.
50 United States v. Lacher, 134 U. S., 624, 628; The Gradwell Case. Mr. Justice Clarke says:

"To admit, as it must be admitted, that the people of the United States and so their Government considered as a political entity,

have an interest in and a right to honest and fair elections advances us but little toward determining whether section 37 was enacted to protect that right and whether a conspiracy to bribe voters is a violation of it. Obviously the Government may have this right and yet not have enacted this law to protect it."

So it is with the right of the voter and the candidate to have honest and fair elections. To admit that he has the right advances us but little toward determining whether section 19 was enacted to protect that right and whether a conspiracy to bribe voters is a violation of it. Obviously the voter and the candidate may have this right and yet section 19 may not have been enacted to protect it.

It is here held that section 19 was not enacted to protect that right, because, as congressional legislation now stands, the States alone can deal with the subject. So far as the practical substance of trials under these indictments is concerned, the sole issue is whether or not the defendants were guilty of bribery at the last general election, and no subtle legal distinctions or refinements can make anything else out of it.

The conclusion is that this court has no jurisdiction in the premises.

This conclusion finds strong support in what was said by Mr. Justice Gray in Green's case, 134 U. S., 377, 380:

"Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors, but has left these matters to the control of the States."

It follows from what has been said that the demurrers will be sustained and the indictments will be dismissed.

In view of this conclusion it may, with propriety, be said
51 that if the charges made in the indictment are true, there was in the last general election wholesale bribery by saloonkeepers, members of the city council, and by many deputy officials in a number of the county and city offices, defendants to these indictments. Many of the poor creatures charged with selling their votes have pleaded guilty of having been bribed. They are now in custody and will be temporarily discharged therefrom pending the termination of proceedings to review this decision, should such proceedings be instituted by the district attorney in behalf of the Government; and they will be apprehended should this decision on review be reversed, otherwise not.

The grand jurors who found the indictments felt called upon to make a public statement of what they believed to be a serious condition of debauchery of our local elections. Since Congress has committed to the States the punishment of bribery at elections at which candidates for Federal positions are voted for, and the present responsibility for the purification of elections in this State rests with

the local authorities, it cannot be doubted that the Court of Common Pleas and the prosecuting attorney of Hamilton County, Ohio, will see to it that the charges made against these defendants by the Federal grand jury, and which failed of trial because the court had no jurisdiction to entertain them, will be investigated by a proper grand jury and punishment meted out to these defendants if they shall, after a trial, be found guilty.

One James Kerr, indicted with others, filed, upon leave first had, a supplementary motion to quash which he fortified by an affidavit, alleging facts, which, if true, showed duress by the district attorney, one of his assistants, and other officers in the employ of the United States, by violence and otherwise, and that he was called before the grand jury without being advised before testifying that any of his acts were under investigation by a United States officer or by the grand jury; that he was never warned by the district attorney
52 or his assistant or any other person that anything he said, either before them or before the grand jury, would or could be used against him for purposes of prosecution, and that the statements he did make to the district attorney and his assistants and other persons connected with the prosecution were made under such circumstances that he was led to believe he was compelled to make such statements and to testify before the grand jury under the laws of the United States.

No more need be said about this affidavit than that it was outrageously false.

Whatever Kerr said or did was entirely voluntary, and his affidavit in support of the motion was in all essentials absolutely refuted by his own testimony on the witness stand. If the demurrers to these indictments had been overruled, the court would have directed the grand jury to investigate Kerr's conduct, and to return an indictment against him for perjury if they thought the circumstances warranted his trial on that charge.

An order may be taken sustaining the demurrers and dismissing the indictments.

HOLLISTER, *District Judge.*

53 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,
vs.
EDWARD BATHGATE ET AL. } No. 1136.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion

of the court and of those portions of the record in the above-entitled cause, designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.] B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917, B. E. Dilley, clerk.

55 UNITED STATES OF AMERICA, *ss:*

To Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Outting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Hanel, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States for the Southern District of Ohio.

56 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Joseph Chambers, and Charles Lewis Finch.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.

[SEAL.]

STEPHEN H. WATERS,
Notary public, Hamilton County, Ohio.

(Indorsed:) Marshal's criminal docket No. 551. Rec'd July 6–17.

CINTI., OHIO, *June 23, 1917.*

We acknowledge service on the within citation as to Edward Bathgate, Matthew Peacock, and John Toker.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defts. above named.

Marshal's fees: 6 services, $12.00.

57 Supreme Court of the United States, October term, 1917.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
v.
EDWARD BATHGATE ET AL.

SAME
v.
JOHN J. BURCKHAUSER ET AL.

SAME
v.
HARRY COONS ET AL.

SAME
v.
WILLIAM FARRELL ET AL.

SAME
v.
OSCAR KLAYER ET AL.

SAME
v.
ROBERT URICHO ET AL.

Stipulation as to printing of the record.

It is stipulated by counsel for the parties to the above-entitled causes that in the printing of the transcripts of records therein the opinion of the court sustaining the demurrers to the indictments shall be omitted from each of the transcripts except in the case of United States, plaintiff in error, v. Edward Bathgate et al., with the right on the part of counsel to refer thereto as if it had been fully set out in each transcript.

JNO. W. DAVIS,
Solicitor General.
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
A. LEE BEATY,
Of Counsel for Defendants in Error.

July 18, 1917.

58 (Indorsed:) 575, &c—26042. Stip. to omit parts of record in printing. Office of the clerk, Supreme Court U. S. Received July 27, 1917.

59 (Indorsed:) File No. 26042, &c. Supreme Court U. S. October term, 1917. Term No. 575 to 580. The United States, P. E., vs. Edward Bathgate et al. Stipulation to omit parts of records in printing. Filed July 27, 1917.

(Indorsed:) No. ——. United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26042. S. Ohio, D. C. U. S. Term No. 575. The United States of America, plaintiff in error, vs. Edward Bathgate, Matthew Peacock, John Toker, et al. Filed July 19th, 1917. File No. 26042.

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